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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

Advanced Television Systems)
and Their Impact Upon the)
Existing Television Broadcast)
Service)

MM Docket No. 87-268

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To: The Commission

PETITION FOR RECONSIDERATION

KMSB-TV, Inc., licensee of KMSB-TV (Channel 11), Tucson, Arizona, by its attorneys and pursuant to Section 1.429 of the Commission's rules, hereby respectfully requests reconsideration of the Commission's Sixth Report and Order ("Sixth R&O"), FCC 97-115, released April 21, 1997, 62 Fed. Reg. 26684 (May 14, 1997), with respect to the allocation of paired channel 25 to KMSB-TV for digital television ("DTV") service.¹

KMSB-TV's NTSC channel 11 is designated as a hyphenated Tucson-Nogales allotment under Section 73.606 of the Commission's Rules. However, the Sixth R&O allots KMSB-TV's

¹ Throughout the course of the above-captioned proceeding, the Commission has made several modifications to its proposals for advanced television and to the DTV Table of Allotments contained in Appendix B to the Sixth R&O. Accordingly, the impact of the assignment of DTV channel 25 to KMSB-TV could not be fully analyzed prior to the release of the Sixth R&O. Moreover, the unavailability of the Office of Engineering and Technology Bulletin No. 69 ("OET Bulletin No. 69") has prevented KMSB-TV, Inc. from fully assessing alternative DTV channel assignments. In view of KMSB-TV's lack of a meaningful opportunity to address its specific DTV channel allotment, and the important public interest issues raised herein, KMSB-TV submits that it has standing to file this petition for reconsideration pursuant to Section 1.429 of the Commission's rules.

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paired digital channel 25 to Nogales only. This Petition seeks the pairing of the DTV allotment to Tucson-Nogales to reflect the historical and unique regulatory status of KMSB-TV. In addition, KMSB-TV proposes to change the current DTV allotment from channel 25, using reference coordinates 31° 42' 18" N.L., 110° 55' 26" W.L., to channel 21 using reference coordinates 32° 24' 54' N.L., 110° 42' 59" W.L.² KMSB-TV also respectfully requests that the Commission take this Petition into account in its coordination negotiations with Mexico.

I. As the Commission Previously Has Found, KMSB-TV Is Uniquely Dependent on the Tucson Market, and Must Enjoy Unencumbered Access to that Market.

The Commission has long acknowledged the unique status of KMSB-TV in the Tucson television market. Originally, Nogales was the allotted and licensed community for KMSB-TV's NTSC channel 11. However, in 1972 the Commission granted a petition to hyphenate the allotment to Tucson-Nogales in recognition of the particular regulatory and commercial burdens confronted by the station.³ As the Commission noted, Nogales is a very small community (1990 Census population 19,489), located about 60 miles south of Tucson on the United States-Mexican border.⁴ Given the size of the community, the Commission recognized that Nogales could not independently support a full service television station.⁵ The Commission also noted that KMSB-TV must identify with and serve the Tucson market to increase its chances for

² KMSB-TV does not propose in this petition to change the allotment of its NTSC channel.

³ TV Channel Assignment at Tucson-Nogales, 32 F.C.C.2d 885 (1972).

⁴ 1990 United States Census of Population and Housing, Arizona (issued March 1993) at 11.

⁵ Id. at 887.

viability.⁶ Thus, the Commission granted the petition to hyphenate the allotment and invited the licensee of KMSB-TV to seek a change in the community of license from Nogales to Tucson, conditioned up the station's ability to provide a principal city grade signal to both Tucson and Nogales, and the maintenance of an auxiliary studio in Nogales.⁷

In 1990, the Commission granted an application by the licensee of KMSB-TV to change the community of license (but not the hyphenated allotment) for the station to Tucson.⁸ In that application, KMSB-TV demonstrated that it had competed for viewers and advertisers in the Tucson market against numerous other full service VHF stations affiliated with major networks without earning a profit for two decades.⁹ KMSB-TV also stated in the 1990 application that, upon the change of the community of license to Tucson, the station would continue to present programming specifically responsive to the needs of Nogales, maintain an auxiliary studio and office in Nogales, and continue to identify with Nogales by using the hyphenated Tucson-Nogales designation in station identifications.¹⁰ Accordingly, after changing the community of license to Tucson, KMSB-TV would continue to satisfy the conditions imposed by the

⁶ Id. at 888-889.

⁷ Id. at 890.

⁸ See FCC File No. BPTC-900423KG.

⁹ As was the case in 1990, KMSB-TV, with rare exceptions, receives no revenue from Nogales advertisers.

¹⁰ See FCC File No. BPTC-900423KG, Exhibit No. 1 at 6.

Commission in the 1972 allotment decision assuring quality technical coverage, studio presence and program service to Nogales.¹¹

KMSB-TV does not propose herein any change to the operating conditions imposed in the 1972 order or to the station's service commitments to Nogales. Rather, the station proposes changes in its DTV allotments that, in recognition of the unique regulatory posture of the station and its economic dependence on the Tucson market, will best promote the Commission's goal of promptly introducing new competitive DTV services.

II. Modifying the Allotment to Channel 25 and Enabling KMSB-TV To Provide Digital Service from the Main Tucson Antenna Farm Will Facilitate the Introduction of New DTV Services and Promote the Economic Viability of the Station.

KMSB-TV's current transmitter site is located at Mount Hopkins, which is about 40 miles south of Tucson. KMSB-TV provides city grade service to both Tucson and Nogales from this site. Many of the Tucson market television stations, however, transmit from the primary antenna farm at Mount Bigelow, which is located approximately 12 miles northeast of Tucson.¹²

Allocation of DTV channel 25 to KMSB-TV based upon the station's existing reference coordinates is likely to have a significant adverse impact on the implementation of digital television service in Tucson and on the station's ability to compete in the marketplace. Tucson

¹¹ The effect of granting KMSB-TV's application to change its community of license to Tucson was to confer, for the first time, the protections afforded by the Commission's syndicated exclusivity and network non-duplication rules for the station in the Tucson market. Absent the change, KMSB-TV would have suffered from a significant and unintended competitive disadvantage with respect to other stations serving that market.

¹² Some television stations also operate from an antenna site just west of Tucson. KMSB-TV currently operates a translator station to serve Tucson areas that are shadowed from the Mount Hopkins transmitter site.

viewers are likely to receive digital service from off-the-air antennas, which would be oriented toward the antenna farms nearest the city, and in particular the primary site to the northeast. KMSB-TV, however, would transmit from the site much further south of Tucson. Moreover, many viewers may use indoor antennas that require a high signal strength. As a result, if KMSB-TV constructed the facility as proposed in the Sixth R&O, viewers in the Tucson metropolitan market would receive a substantially lower quality signal from the station than other area television broadcasters.

Given the station's licensing history and the long-standing acknowledgment that KMSB-TV is dependent on the Tucson market for its economic viability, KMSB-TV submits that the reduced quality of digital service and the resulting commercial harm would constitute unwarranted competitive disadvantages and, moreover, would clearly be contrary to the public interest. KMSB-TV therefore proposes to resolve this anomaly by relocating the digital service station to the main antenna farm used by other Tucson broadcasters. To accomplish this, KMSB-TV seeks to change its allotted DTV assignment from channel 25 to channel 21, and to modify the reference coordinates to 32° 24' 54' N.L., 110° 42' 59" W.L.¹³ Moreover, to conform the

¹³ The availability of Channel 21 is derived from the National Association of Broadcasters' Alternative DTV Channel Assignments in the Continental United States, which was produced by software developed by the Broadcasters Caucus. However, KMSB-TV notes that the unavailability of OET Bulletin No. 69, which will clarify the Commission's methodology for evaluating coverage areas and interference, has prevented the station from engaging in a detailed analysis of all the implications of changing the DTV channel and reference coordinates. Accordingly, KMSB-TV respectfully requests that it be allowed a reasonable amount of time following the release of OET Bulletin No. 69 or other definitive technical guidelines to supplement this petition with a full engineering study demonstrating that the changes proposed herein comply with the Commission's DTV rules and policies.

DTV and NTSC allotments, KMSB-TV requests that the Commission modify the allotment of the station's DTV frequency to Tucson-Nogales.

Relocation of KMSB-TV's digital service to the Mount Bigelow site likely would prevent the station's main transmitter from providing a city grade signal to the entire community of Nogales. To satisfy the 1972 condition that Nogales receive a city grade signal, KMSB-TV therefore proposes to construct either a digital translator operating on channel 25 or a booster station for the benefit of the community. KMSB-TV submits that this proposal will best serve the public interest by facilitating the station's ability to provide a high quality and competitive digital service to Nogales and the Tucson metropolitan market.¹⁴

III. Conclusion


Accordingly, KMSB-TV, Inc. respectfully requests reconsideration of the Sixth R&O to the extent it allocates DTV channel 25 at Nogales using reference coordinates 31° 42' 18" N.L., 110° 55' 26" W.L., and urges the Commission to amend the DTV Table of Allotments to assign DTV channel 21 at Tucson-Nogales using reference coordinates 32° 24' 54' N.L., 110° 42' 59"

¹⁴ From the Mount Bigelow site, the licensee believes that KMSB-TV could provide city grade service to Tucson, its current community of license, in compliance with Section 73.685 of the Commission's Rules.

W.L. KMSB-TV also asks the Commission to consider this proposal in its coordination discussions with Mexico.

Respectfully submitted,

KMSB-TV, INC.

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June 13, 1997

DECLARATION OF KENNETH MIDDLETON

I, Kenneth Middleton, declare under penalty of perjury as follows:

I am President and General Manager of KMSB-TV, Inc., licensee of KMSB-TV, Tucson, Arizona. I have reviewed the foregoing "Petition for Reconsideration" and, except for facts of which the Commission may take administrative notice, the facts contained therein are true and correct to the best of my information and belief.


Kenneth Middleton

June 13, 1997